

DOCUMENT RESUME

ED 295 163

CS 211 254

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TITLE Living Dangerously--Changing Press Law in India.
PUB DATE Jul 88
NOTE 38p.; Paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication (71st, Portland, OR, July 2-5, 1988).
PUB TYPE Speeches/Conference Papers (150) -- Viewpoints (120)
EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Censorship; Colonialism; Democracy; Foreign Countries; *Freedom of Information; *Freedom of Speech; Government Role; Information Dissemination; Legislation; Media Research; *Newspapers; Press Opinion
IDENTIFIERS Critical Analysis; Historical Background; *India; Media Government Relationship; Nineteenth Century History; *Press Law; Press Role; Twentieth Century History

ABSTRACT

An examination of the changes in press laws after India gained its independence in 1947 shows how a free press is shaped mostly by the structure and evolution of the democratic society that it is intended to serve. The most salient features that have characterized the Indian press, from the early nineteenth century to the present day, are political opposition and reaction to a number of laws with regard to the media that India inherited from Great Britain (for example, registration of books, newspapers, and periodicals). Prior to independence several bodies of legislation shaped the tenor of the increasing tension between the press and government. In 1947, the new constitution superseded all previous restrictive press laws and guaranteed all individuals "freedom of expression." Analysis of legislation passed since then and a comparison with other countries' policies towards freedom of the press, shows that political history and geography can mean as much as ideology. The single issue which continues to play a major role in both the political and press life of the nation is the tension between maintaining communal calm and the freedom to inform, incite, and excite on religious issues. The laws the press now functions under have the capacity to engender repression, but judicial sanctions help ensure the continuing ability of the Indian press to function critically. (Eighty-one notes are included, and 37 references are appended.) (MS)

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LIVING DANGEROUSLY --
CHANGING PRESS LAW IN INDIA
by Timothy Ryan

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LIVING DANGEROUSLY --
CHANGING PRESS LAW IN INDIA

"As freedom of the Press is always in danger,
so it is always dangerous. The freedom of
the Press illustrates the commonplace that if
we are to live progressively, we must live dangerously."

-- The Hutchins Report on Freedom
of the Press in the USA, 1947

INTRODUCTION

Today India's burgeoning mass media is among the most voluminous and variegated in the world; the largest democracy's press, film, magazine and television industries are continuing to grow and evolve in their own fashion. That the individual qualities that make up a free press depend upon politics and history unique to time and place is crystal clear in comparing the situation in India with the press of Britain and the United States. In considering the change of press laws after Independence, I hope to show how a free press is shaped mostly by the structure and evolution of the democratic society that it is intended to serve.

While this is principally a study of the change of press laws before and after 1947, and the political factors that characterized the change, a certain

amount of historical background is necessary to establish the ground in which the free press of India took root.

Far from being a wholly-new phenomenon on the subcontinent, newspapers (though of a pre-typographic format) were routinely found in Mughul times, as Aurangzeb kept his soldiers supplied with news sheets of happenings in the empire, principally focused on issues and intrigues at the center.¹

The first typographic newspaper produced in India was predictably in English, the Bengal Gazette, produced by James Hicky in 1780. This was a mere 80 years after the first daily paper appeared in Britain.² However, this was not the first attempt to start a paper. William Bolts, an ex-East India Company employee, demonstrated that politics and economics inevitably dominated any establishment of the press. In 1767 Bolts resigned from the Company's service and when the Court of Directors learned of his intention to begin a paper in which he would have "many things to communicate which most intimately concerned every individual" they were alarmed with alacrity.³ Bolts was speedily deported and it wasn't until 1780 that Hicky actually produced a paper that did pretty much what Bolts had attempted -- exposing the private lives of servants of the Company.

British administrators' concerns about "appropriate" information began to surface with two developments, the rise of the missionary and vernacular presses

¹Sivaraman, A.N., "The Vernacular Language Newspapers", Journalism in Modern India, 2nd ed., Wolseley, Roland, ed., Bombay, Asia Publishing House, 1962, p. 16-17.

²Charlton, A.E., "The English Language Newspapers", in Journalism in Modern India, p. 7.

³Natarajan, J. History of Indian Journalism, Part II of the Report of the Press Commission, New Delhi, Publications Division, Ministry of Information and Broadcasting, Government of India, 1955, p. 4.

in the early nineteenth century. This three stage process, beginning with Company-related publishers, followed by missionaries, and then the rise of vernacular press in reaction to the missionaries, characterizes the historical development of the main sectors of the Indian press in the first half of the nineteenth century.⁴

The first significant development in press law in India, however, came with the regulations propagated by Governor-General John Adams and approved by the East India Company Court of Directors on December 18, 1823. The chief ordinance required that everything produced with a press or published in India would be printed under license from the Governor-General-in-Council, signed by the Chief Secretary of the Government. The regulations included application procedures, asked for detailed publisher information and set standards for proscribing objectionable material. It also provided a penalty of up to Rs. 1,000 or 6 months in prison for publishing without a license.⁵ Eventually the Adams Regulations were repealed, in a joint move by Charles Metcalfe and Thomas Macaulay, for whom the strictures of the Adams Regulations offended their liberal, utilitarian beliefs.⁶ The Metcalfe Statute of 1835 served as a licensing and registration act, but removed many of the pre-censorship provisions of the Adams Regulations.⁷

⁴Sivaraman, "Vernacular Newspapers", in Journalism in Modern India, p. 17.

⁵Natarajan, S. History of Press in India, Bombay, Asia House Publishing, 1962, p. 21.

⁶Sarkar, R.C.S., The Press in India, New Delhi, S. Chand & Co. Ltd., 1984, p. 20.

⁷Natarajan, History of the Press in India, p. 62-63.

The rise of the vernacular press, although mostly given to religious and literary matters, was indicted by these regulations, as among the newspapers cited in justification of the licensing measure was Ram Mohan Roy's Mirat-ul-Akhbar. As an intellectual and reformer, Roy's interests and criticisms naturally dealt with British social and administrative policies, as well as elements of Hindu society and philosophy.⁸ His view of the relationship of the press to government is precise and insightful:

"Every good ruler, who is convinced of the imperfection of human nature, and reverences the Eternal Governor of the World, must be conscious of the great liability to error in managing the affairs of a vast empire; and, therefore, he will be anxious to afford every individual the readiest means of bringing to his notice whatever may require his interference. To secure this important object, the unrestricted liberty of publication is the only effectual means that can be employed. And should it ever be abused, the established law of the land is very properly armed with sufficient powers to punish those who may be found guilty of misrepresenting the conduct or character of Government, which are effectually guarded by the same laws to which individuals must look for protection of their reputation and good name."⁹ (emphasis added).

PRESS LAWS IN THE 19TH CENTURY

Even in the early nineteenth century, the two salient features that have marked the Indian press up to the present day -- political opposition and the role of non-special press laws with regard to the media that India inherited from Britain (i.e. institutional law such as penal codes, etc.) -- was evident in the works of Roy and other critics, intellectuals and reformers.

⁸Natarajan, History of Indian Journalism, p. 22.

⁹Ibid, p. 15.

It was only after the Mutiny in 1857 when the political and racial climate between British and Indians underwent a distinct shift, that we see both the emergence of vociferous, calculated and committed political opposition, and the first of the press regulations that actually continue to have some impact in India today. The Act of 1857, imposed in the wake of the Mutiny, reestablished the main features of the Adams Regulations of 1823, though as a kind of emergency measure: it was in effect for a single year. Although the Press had little actual impact on the Mutiny, the British reacted as if the vernacular press was an instigator of the uprising and evidence of India's stickiest challenge to press laws, communal relations, show up in some of the 1857 Act's passages quoted below:

"That no book, pamphlet, newspaper or other work printed at such press, or with such materials or articles, shall contain any observations or statements impugning the motives or designs of the British Government either in England or in India or in any way tending to bring the said Government into hatred or contempt, to excite disaffection or unlawful resistance to its orders, or to weaken its lawful authority, or the lawful authority of its civil or military servants. . ."

"That no such book, pamphlet, newspaper or other work shall contain observations or statements having a tendency to create alarm or suspicion among the native population of any intended interference by government with their religious opinions and observances. . ."¹⁰

The Mutiny also marked the divergence of interests between Anglo-Indian and Indian periodicals as the significance of the Act was the singling out of vernacular journals and papers. In propagandizing for the Act's passage, Lord

¹⁰Sarkar, R.C.S., The Press in India, New Delhi, S. Chand & Co. Ltd., 1984, p. 21.

Canning said "I am glad to admit that the Bill is not especially levelled at the European Press."¹¹

The first legislation passed, of which parts actually remain in force today, was the Press and Registration of Books Act of 1867. It was last amended in 1956.¹² This, however, is a purely regulative law, intending no censorship but imposing rules and regulations for the registration of all books, newspapers and periodicals with the government for statistical purposes.¹³ More repressive legislation that singled out only vernacular papers and passed over Anglo-Indian establishments was enacted in 1878, again reinstating some of the more oppressive aspects of the Adams Regulations of a half century earlier.¹⁴ The Vernacular Press Act of 1878 provided to any magistrate of a district or commissioner of police in a Presidency town the power to impose pre-censorship through the levying of security and forfeiture of bond (and possibly imprisonment) on those members of the press whose printed material was deemed "objectionable" by said local officials.¹⁵ After the change of government in Britain in 1880, however, the Act was repealed the

¹¹Natarajan, History of Press in India, p. 50.

¹²Mehta, P.N., "The Law of Journalism," in Journalism in Modern India, p. 206.

¹³Basu, Durga Das, Law of the Press in India, New Delhi, Prentice-Hall of India, Pvt. Ltd., 1980, p. 3.

¹⁴Sarkar, Press in India, p. 22.

¹⁵Natarajan, J., History of Indian Journalism, Part II of the Report of the Press Commission, New Delhi, Publications Division, Ministry of Information and Broadcasting, Government of India, 1955, p. 85.

following year.¹⁶ Just as the language policies on education went through various reverses, the see-saw battle between those in the British administration who saw a relatively free press as necessary not only to orderly social development but as philosophically consistent with British policies at home, and those who basically feared freedom of the press, continued throughout the nineteenth century. It was only with the heightened Indian political consciousness later in the century and in the early 1900's that the advocates of fear in British ranks began to turn the screws. To paraphrase Justice Brandeis of the U.S. Supreme Court, ". . .fear breeds repression, repression breeds hate, hate menaces stable government. . ."¹⁷ The result was predictable -- greater vociferousness on the part of all involved.

There are eight additional principal bodies of legislation that shaped the tenor of the increasing tension between the press and government up to Independence in 1947. They are the Press and Registration of Books Act of 1890, the Indian Penal Code of 1898, the Press Acts of 1910, 1922 and 1930, the Press Emergency Powers Act of 1931, the Indian States Protection Act of 1934, and the Defence of India Act in 1940. Of these, the Penal Code of 1898, the Indian States Protection Act of 1934 and the Defence of India Act in 1940 are examples of the direct influence of British press law tradition that shows up in post-Independence India. Aspects of each of these pieces of legislation will be considered in turn.

The Press and Registration of Books Act in 1890 was an updating of the Registration Act of 1867. (Subsequent updates to the Act were provided in

¹⁶Sivaraman, "Vernacular Newspapers", in Journalism in Modern India, p. 20.

¹⁷Whitney v. California, (1927) 274 U.S. 357 (375-76), in Law of the Press in India, Basu, p. 17.

1914, 1952 and 1953.)¹⁸ Again, rather than being conceived as a censorship measure, it was aimed at increasing the comprehensiveness of the licensing and registration process of books, magazines and periodicals. However, as with any law, ultimate compliance with authority rests on the promise of coercion. Failure to follow the law could result in penalties of fines up to Rs 5,000 and/or two years in prison.¹⁹ Perhaps we may take the increase in monetary and punitive punishment since the Adams Regulations of 1823 to mean that the quality and danger of debate was on the rise. . . The 1890 Act is included in this list because although viewed in the spirit of the time this law was not seen as a censorship measure, in the political analysis section of this paper I will point out the implicit relationship of the state's power of information and its ability to censor. This law is still on the books in India today.

A major example of statutory law, the additions to the Indian Penal Code in 1898, affected the Press without being embodied in a work of legislation specifically aimed at the media. The sections added, 124A, 153A and 505, not only demonstrate the attempt by the British authorities to institutionalize press restrictions in the face of rising criticism and social unrest, but to make the punishments so punitive as to foreshadow the draconian measures of totalitarian dictatorships of the twentieth century. Section 124A provided for maximum penalties of "transportation for life or any shorter term, to which fine may be added" for those who ". . .by words, either spoken or written, or by signs, or by visible representation or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite

¹⁸Natarajan, History of Indian Journalism, p. 74.

¹⁹Ibid, p. 78.

disaffection towards Her Majesty or the Government established by law in British India. . ." "Disaffection" in this view meant "disloyalty and all feelings of enmity". It also placed the burden of proving intent to excite "hatred, contempt or disaffection" on the accused. Conceivably, as the Code was written, it was possible for a publisher to print a "legal" article attacking the British, but if it excited "enmity" or "hatred" in an unstable reader, the publisher had violated the law.²⁰

Section 153A reflects the rising tensions between the various social and religious groups of India, and British concerns about constraining that tension. A term of two years, fine, or both, are cited as punishment for an offender who ". . . by words, either spoken or written. . .promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects. . ." This was not the first, nor the last of the press restrictions that is unique to India in the context of the other democracies to be discussed, the U.K. and the U.S. Likewise, Section 505 becomes more specific, specifying a two-year term, fine, or both for anyone who incites (or attempts to incite) mutiny in any of Her Majesty's armed forces, or incites (or attempts etc.) any class against any other class.²¹ The respective punishments in Sections 124A, 153A and 505 are an interesting measure of how much graver enmity against the State was viewed by the colonial authorities than enmity against fellow countrymen.

Due to the rise of political conflict between 1900 and 1910 (Lord Curzon's administration, particularly his partition of Bengal in 1905 and

²⁰Ibid, p. 157.

²¹Ibid, p. 157-158.

reactions to it, is a notable example) the British enacted the Press Law of 1910. This represented an increase in the oppressive measures that had been escalating in the colonial body of law since the turn of the century. Security deposits were required from everyone who owned a printing press, regardless of their legal record and increased forfeiture in the case of

"...tenden[cies], directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise, to incite to murder. . . or to seduce any officer from his allegiance or his duty, to put any person in fear or cause annoyance to him, to encourage or incite any person to interfere with the administration of the law or the maintenance of the law and order and so on;"²²

From 1910 to 1923, many papers suffered greatly under the restrictions. Zamindar, a volatile paper published by Zafar Ali Khan, Abdul Hanan, S.D. Hasan, Asif Ali, and Yusaf Ali Khan, registered a collective punishment record between 1913 and 1922 of Rs. 18,000 in security forfeited, several thousands of rupees in fines from individual editors, and a sum total of prison time levied on a variety of editors and publishers (mostly under the Indian Penal Code) of 18 years, 10 months.²³ As with many other extreme press laws, enlightened opinion in Indian as well as Anglo-Indian society and in Britain, itself, helped secure repeal of the Act, but not until 1922. The Press Act of 1922 repealed not only the Act of 1910, but also the additional Criminal Law Amendment Act of 1913 and

²²Sarkar, Press in India, p. 25.

²³Confidential Publications and Home Political Files, Statement of Newspapers and Periodicals Published in India and Burma During the Year 1933, c. 1934, p. 765-770, South Asia Microform Project, University of Chicago, (hereafter "SAMP") MF-3066, Reel 5.

the Defence of India Regulations of 1914, passed at the outbreak of the First World War.²⁴

This crucial period after World War One leading up to Independence included the first and second satyagraha campaigns, the "Quit India" and "Pakistan" movements, and World War Two. "There was no improvement in the tone of the press," read one government report on the Punjab in 1923, as Gandhi's non-cooperation campaign of 1922-23 heated up:

"The attitude of the Sikh newspapers in particular was of active hostility towards the Government. Openly inflammatory articles were written and sedition was preached without restraint. . . . Certain papers even preached the severance of relations with government, destruction of bureaucracy and resort to violence."²⁵

All over India, violations of the press laws were on the rise -- in the Madras Presidency, the number of publications declared to be in forfeit rose from 125 in 1922 to 182 in 1923.²⁶ This period demonstrated how diverse interests were competing to realize their vision of a post-imperial homeland. Sometimes that competition, as during the satyagraha campaign of the 1920's spurred by socio-economic pressures and propaganda, erupted into communal strife.²⁷ The containment of communal propaganda has been one of the greatest tensions with regard to press freedom under both colonial and post-colonial rule.

²⁴Sarkar, Press in India, p. 26.

²⁵Confidential Publications and Home Political Files, Annual Report of Indian Newspapers and Periodicals Published in the Province of the Punjab, 1923, New Delhi, c. 1923, p. 1, SAMP MF-3066, Reel 1.

²⁶Confidential Publications and Home Political Files, Letter from N.E. Marjoribanks, Chief Secretary to Government of Madras, Publications Department, to Secretary of the Government of India, Home Department, May 12, 1924, p. 1, SAMP MF-3066, Reel 1.

²⁷Brown, Judith M. Modern India -- The Origins of an Asian Democracy, New Delhi, Oxford University Press, 1985, p. 223.

During this time also the financial squeeze imposed on Indian political and educational institutions by the Montagu-Chelmsford reforms caused financial, but not philosophical, retrenchment. By 1927-28 the use of vernacular languages in secondary education, long the dividing line between English (upper education) and non-English (lower grades) was spreading rapidly.²⁸ And with the world depression of the 1930's, there was a further decrease in British expenditures for education.²⁹ Yet even as the amount of money spent on education shrunk, the literacy rate continued to climb, assuring a growing market for media of all kinds.³⁰ The numbers of newspapers and periodicals, while always in flux, continued to grow dramatically in overall numbers through the '20's and '30's. In the Punjab, for example, the records show 307 papers being published in 1925,³¹ while sixteen years later the number had shot up to 787.³² In terms of newspaper stability, numbers from the Central Provinces and Bihar show a pattern found all over the subcontinent. In 1935, there were 75 total papers in circulation in the Central Provinces, but during the year 30 ceased publication and

²⁸Bureau of Education, India, Indian Education in 1927-1928, Calcutta, Superintendent of Government Printing, 1930, p. 22.

²⁹Bureau of Education, India, Indian Education in 1932-1933, Calcutta, Superintendent of Government Printing, 1935, p. 8.

³⁰Brown, Modern India, p. 235, 250.

³¹Confidential Publications and Home Political Files, Report on the Indian Owned Newspapers and Periodicals Published in the Punjab and Native States During the Year 1925 and on the Working of Acts XXV and 1867 and XIV of 1922 During the Same Period, p. 1, SAMP MF-3066, Reel 2.

³²Confidential Publications and Home Political Files, Statement of Newspapers and Periodicals Published in the Punjab During the Year 1941, p. 278, SAMP MF-3066, Reel 6.

28 new ones were registered.³³ Similarly, in Bihar the numbers of papers that ceased publication and the numbers that began in a given year were roughly equal.³⁴

Because there was no united voice of protest that offered a comprehensive counter to the Government's now slightly-worn reforms, for a period of seven years, from 1923 to 1930, the Press in India actually functioned without special legislative restrictions.³⁵ In the correspondence and reports from the state governments at this time, the numbers are telling. In Madras Presidency in 1926, the number of forfeits of press-owners fell from 74 to 8 in one year. There were no prosecutions.³⁶ Similarly, there were no prosecutions in Bihar and Orissa³⁷ that year, and barring only 8 forfeits, none recorded in the Bengal Presidency.³⁸ Contrast this with the 79 formal warnings, 55 prosecutions

³³Confidential Publications and Home Political Files, Memorandum No. 147/201, from A.L. Binney, Chief Secretary to the Government of the Central Provinces, Political Office, Publicity Department, to the Secretary of the Government of India, Home Department, Simla, June 24, 1936, p. 1, SAMP MF-3066, Reel 5.

³⁴Confidential Publications and Home Political Files, Memorandum from Brett to Secretary of Government of India, Home Department, Simla, April 30, 1936. p. 4-5, SAMP MF-3066, Reel 5.

³⁵Natarajan, History of Press in India, p. 211.

³⁶Confidential Publications and Home Political Files, Letter from A.Y.G. Campbell, Chief Secretary to Government of Madras Presidency, Political Department, to Secretary of Government of India, Home Office, 9 June 1926, p. 1-2, SAMP MF-3066, Reel 3.

³⁷Confidential Publications and Home Political Files, Letter from H.K. Briscoe, Chief Secretary to Government of Bihar and Orissa, Political Department, to Secretary of Government of India, Home Office, 7 April 1926, p. 1, SAMP MF-3066, Reel 3.

³⁸Confidential Publications and Home Political Files, Annual Report on Indian Papers Printed or Published in the Bengal Presidency, 1925, Calcutta, Bengal Government Press, c. 1926, p. 24, SAMP MF-3066, Reel 2.

against Hindu, Muslim, and Sikh periodicals, and the proscription of 117 publications in the Punjab just three years earlier.³⁹

On March 12, 1930, Mahatma Gandhi was authorized by the All India Congress Committee to begin one of his many agitations, in this case, his salt satyagraha. Within a month he was arrested, and within two months a Press Ordinance resurrecting the harsh provisions of the Press Act of 1910 was issued. Four months later, by July 1930, 131 newspapers had been required to pay securities and nine had stopped publication.⁴⁰ In the face of increased political agitation and violence, the fist of British censorship squeezed tighter throughout the 1930's.

Ironically, the policy the British followed of attempting to deal with different political groups in individual contexts (e.g., the Muslims, the Untouchables) as a form of political control actually exacerbated communal tension and led to the British passing further repressive press legislation. The Indian Press Emergency Powers Act of 1931, for instance, read very similarly to previous acts, such as the Vernacular Press Act of 1878 and the Press Act of 1910. In this legislation, however, were added proscriptions against incitement along communal lines and against rulers or officials of the Indian states; against ". . .put[ting] any person in fear . . . and thereby induc[ing] him to deliver to any person any property or valuable security, or to do any act which he is not legally bound to do. . ."; and against advocating interference or non-cooperation with the collection of land-revenues and taxes. The Indian States

³⁹Confidential Publications and Home Political Files, Annual Report of Indian Newspapers and Periodicals Published in the Province of the Punjab, 1923, New Delhi, c. 1923, p. 2, SAMP MF-3066, Reel 2.

⁴⁰Natarajan, History of Press in India, p. 212.

Protection Act of 1934 extended the Emergency Powers Act of 1931 to cover the Indian States.⁴¹

Certain trends evident in the 1920's continued in the 1930's. The pressure on agriculture, plus the treatment of the world depression on raw agricultural products, fed the flood of workers into the cities. In 1932-33, wholesale prices in Calcutta and Bombay were approximately half what they had been a decade earlier.⁴² Between 1891-2 and 1939-40, the number of acres per person engaged in agriculture slid from 2.23 to 1.90.⁴³ Even though numbers and levels of education rose, jobs were not always forthcoming. The cycle of increasing industrialization, rising literacy and education fed an urban workforce that demanded a more comprehensive, far-reaching communications network. Education, rising industrialization and literacy brought with it increased expectations and competition, and so the increasing regionalism manifested in the 1920's became more pronounced in the 1930's. Despite Gandhi's desires to see his second sat-yagraha campaign become a unifying measure across caste, class and communal lines, there was renewed criticism from the expanding press. In a confidential 1933 government report it is noted in the Northwest Provinces (with a higher percentage of Muslims, in particular, than most other parts of British India) that with regard to the non-cooperation movement

"Very few papers sympathized with Mr. Gandhi. They were of the opinion that the motives of his fast were not genuine in as much as he only wanted to be released. The Muslim papers characterized Mr. Gandhi as a rank com-

⁴¹Ibid, p. 221-220.

⁴²Brown, Modern India, p. 248.

⁴³Ibid, p. 244.

munist who deceived people having assuming a false appearance of a nationalist."⁴⁴

Though the opinions of the Muslim papers such as those expressed above were such that the government might easily have brought the Press Laws to bear on them, these opinions dovetailed with the British administration's and so, overall, this was viewed in the report as a relatively quiet year in the Northwest Provinces.⁴⁵

Up to the outbreak of World War II, the relationship of the British government to the most vocal sections of the Indian Press had been one of escalating enmity. While 131 papers were forced to pay securities in 1931, there were 450 papers that ceased publication in 1935 because they could not put up the deposit demanded. Only 15 actually paid the amount demanded by the government.⁴⁶ The majority of the thousands of papers and periodicals springing up all over the subcontinent at this time kept themselves well within the limit of law due either to editorial temperament or content, although the Acts of 1910, 1930, 1931 and 1934 directly reflect the colonial government's nervousness and fear of the Independence Movement.

As was to be expected, in 1940 the British passed a Defence of India Act providing for censorship of war news. This, with the added weight of the legislation of the 1930's, was not effective in silencing Gandhi, the Congress leaders, and other advocates for Independence. Gandhi began an Individual Civil Disobedience campaign in 1940 that took a year to reach fruition. In reaction

⁴⁴Confidential Publications and Home Political Files, Statement of Newspapers and Periodicals Published in India and Burma During the Year 1933 c. 1934, p. 495, SAMP MF-3066, Reel 4.

⁴⁵Ibid, p. 982.

⁴⁶Natarajan, History of Press in India, p. 252.

to the subsequent clampdown by the Government, the All India Newspapers Editors Conference was formed.⁴⁷ In 1942 the "Quit India" movement was launched and subsequently most Indian nationalist leaders (with the notable exception of Subhas Bose) were imprisoned for the duration of the war. While it is only with the end of World War II and the wearied British capitulation in 1947 that the advent of the "free press" in India really begins, history shows us that the groundwork for the dynamics that would generate a vigorous and healthy Press were laid a century before.

PRESS LAWS: POST-INDEPENDENCE

The relaxation of press restrictions began in 1946, a year before actual independence. During the year 1946-47, however, as general press laws were weakened, a number of short-duration, special "public order" acts were passed in various states due to the increasing strife surrounding the event of Partition. These were not opposed by the Indian Press, as they were directly related to public order and communal disturbances, not government criticism.⁴⁸

After Independence in 1947, the addition of Article 19(1)(a) in the new constitution effectively superseded all previous restrictive press laws and guaranteed all individuals "freedom of expression", construed by the Supreme Court as including the press as an individual, not a special organization or entity.⁴⁹ There is no underestimating the impact and power of this sweeping

⁴⁷Ibid, p. 239.

⁴⁸Natarajan, History of Indian Journalism, p. 172.

⁴⁹Basu, Law of Press in India, p. 10.

declaration, set in the Constitution. Nor should the power of politicians at various stages of the State hierarchy to interpret events as demanding press restrictions be underestimated. As Vallabhbhai Patel bluntly put it, "We are interested in papers that support us wholeheartedly. To say you will support us when we are right is meaningless. For why should anyone oppose us then?"⁵⁰ Several examples follow of the Press in India facing intense pressure and restrictive legal action, yet there can be no comparison of the general situation between the colonial administration and the Indian Government. Independence meant a form of free press for the first time in India. Editors today do not face possible prison terms up to life for doing their jobs. That some risk their very lives at times is another issue.

In 1947, the new government appointed an Inquiry Committee to investigate the state of Press Laws in the country. It recommended, among other things, amendments in the Press and Registration of Books Act, repeal of the Acts of 1922, 1931, 1934, and modifications of Sections 124-A and 153-A of the Indian Penal Code to remove restrictive language and allow for the advocacy of peaceful social change.⁵¹

During the later colonial period, especially the twentieth century, the British administrators' chief concern regarding the press was control of political criticism and communal disturbances. In the post-Independence period, the chief concerns of the new government with the press were principally social agenda issues: anti-communalism, development, economic democracy, allocation of resources.

⁵⁰Natarajan, History of the Press In India, p. 313.

⁵¹Natarajan, History of Indian Journalism, p. 172-173.

To this end, an amendment to Article 19(2) was passed in 1951 over the objections of the All India Newspaper Editors' Conference. It stipulated that Article 19(1)(a) did not explicitly restrict the State's right to pass laws regulating the press in the interests of the State's (or individual States'), public decency, order and morality, or relations with foreign states.⁵² In effect, the Indian Government had attempted to put in an escape clause.

The Press (Objectionable Matters) Act of 1951, growing out of the advice of the Press Laws Enquiry Committee, outlawed pre-censorship, forfeiture at the discretion of the executive branch, banning circulation and imposing control on the sale and distribution of Indian newspapers.⁵³ The most important part of the act, however, was the fact that for the first time all actions of the government toward the press were subject to judicial sanction.⁵⁴ This is the kind of federalist component that is similar to press-governmental structural relations in the United States and also in the U.K.

This, of course, was not the end of the story. The Press Commission in 1952 was a government creature, and of the areas that it considered, only one of the seven actually involved technical freedom of the press. The other issues were newspaper control and ownership, the existence of monopolies and chains, holding companies and advertisements, journalist recruitment and working standards, newsprint supplies and standards of journalist and government working

⁵²Ibid, p. 174-175.

⁵³Irani, Behram S., "Challenge to Press Freedom in India, 1947-63," MA thesis, University of Wisconsin, 1964, p. 18-19, SAMP MF-3066, Reel 7.

⁵⁴Natarajan, History of Indian Journalism, p. 175.

relations.⁵⁵ The Commission's basic approach on press laws differed from the Government, however, in that it favored emergency laws that were temporary in nature, while the Government followed the lead of the British in attempting to formulate press laws within the body of existing legislation such as the Indian Penal Code.⁵⁶

One of the most significant recommendations in terms of censorship potentials to come from the Commission report became the Price/Page Schedule, passed in 1956, enacted in 1960. With an eye toward economic restructuring and news-print shortages, the act regulated the numbers of pages and relation to the price that a paper could charge. The ostensible purpose behind this legislation was to support a decentralizing process, encouraging smaller, provincial presses at the expense of the big chains and national dailies.⁵⁷ In a textbook functioning of the judicial review process that protects free speech, however, the Supreme Court in 1961 ruled the Price/Page Schedule unconstitutional.⁵⁸ Judge Mudholkar said in part:

"Since circulation of a newspaper is a part of the right of the freedom of speech the Act must be regarded as one directed against freedom of speech. . . Such a course is not permissible and the courts must be ever vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution. . . Since [the Act's] object is to affect directly the right of circulation of newspapers which would necessarily undermine their power to influence public opinion, it cannot but be regarded as

⁵⁵Irani, "Challenges," p. 30.

⁵⁶Natarajan, History of the Press in India, p. 299.

⁵⁷Irani, "Challenges", p. 31.

⁵⁸Ibid, p. 41.

a dangerous weapon which is capable of being used against democracy itself."⁵⁹

The issues addressed by the Price/Page Schedule were not solved by legislation. Newsprint shortages and government control as a commodity over newsprint have meant an indirect, de facto censorship for the Indian Press. The government power to regulate newsprint was fast on the heels of the aforementioned Supreme Court decision. Under the auspices of the Essential Commodities Act of 1955, the Newsprint Control Order was passed in 1962.⁶⁰

A socialist and public-minded political agenda is clearly evident in the measures promulgated by the Government and this agenda remains one of the key motivating forces on the national level for press control. A variety of other press laws, analogous to restrictions on cigarette advertising on U.S. television, for example, have been passed over the years: The Young Persons (Harmful Publications) Act (1956),⁶¹ The Drugs and Magic Remedies (Objectionable Advertisements) Act (1954), and The Prize Competition Act (1955),⁶² are the major ones. Yet the single greatest constraint on the Press today in India continues to be the Government's control of newsprint.

This is not to suggest that there have not been periods of greater press censorship at various times: in 1962, for instance, during the war with China, Emergency Rule was instituted under the Indian constitution which called for

⁵⁹Thomas, G., "Relation between the Government and the Press in India", unpub. Master's thesis, University of Wisconsin, 1963, p. 40, SAMP MF-3066, Reel 7.

⁶⁰Irani, "Challenges", p. 64.

⁶¹Mehta, "Law in Journalism", in Journalism in Modern India, p. 202-209.

⁶²Radhakrishnamurti, Baddepudi, Indian Press Laws, Guntar, India Law House, 1976, p. 261-268.

sweeping executive powers, including prohibitions on certain printed matter and active censorship.⁶³ And like the U.S. and Britain, who have had rigid press censorship during times of national emergency, India returned to a more open press policy after the war passed.

The Emergency of 1975 presented another picture, however. Indira Gandhi's proclamation, imposition of President's rule in various states and subsequent strong-arm tactics were unprecedented -- as was the resounding voter rejection of these tactics in the 1978 elections. Without going into the specifics of the Emergency, it is worth noting that the press censorship covered a wide variety of concerns, many entirely unrelated to those mentioned in Article 19(2) to the Constitution reserving some power unto government to regulate the press. In September 1975 reports and comments on Bangladesh were submitted to precensorship, and advertisements from both North and South Korea were banned. In December 1975, details of the Congress WC draft resolution and coverage of Badr Abdul Aziz of the Saudi Royal family's visit to Amritsar were banned. All stories from Madras had to be submitted to precensorship by mid-January 1976, as, of course, did all stories concerning family planning.⁶⁴ Some remarkable examples of blatant misuse of executive powers to stifle the press are evident in the subject matter proscribed, precensored or banned outright: coverage of a Wild Life Board query about a certain Maharaja's brother receiving a hunting license; mention of the Finance Minister resting briefly in the course of his Budget speech; Sanjay Gandhi's snubbing a function held in his honor; a small fire at a

⁶³Irani, "Challenges", p. 96-99.

⁶⁴Sorabjee, Soli, The Emergency, Censorship and the Press in India, 1975-1977, New Delhi, Central News Agency, Ltd., 1977, p. 26-29.

television station; criticism of Anwar Sadat; the actress Nargis' arrest for shoplifting; the list of trivia goes on and on.⁶⁵

While the 1975 Emergency was an aberration both in political and Press history in India, by no means have vested interests given up the desire to manipulate the Press, and neither have they spared the coercive force of the Government to do so. It should be noted that for the most part this conflict has worked itself out at the state level, and that there are numerous documented cases of flagrant state violence against journalists, not omitting murder, but these have in the past represented individual corruptions of authority, not a pattern of vested government-structured and institutionally-sanctioned suppression. The situation certainly is different state to state. In May of 1983 the (Congress Party) Chief Minister of Bihar attempted to pass a state-wide restrictive press law, which died under strong protest from the Press and other segments of the community. Yet in Tamil Nadu in February 1982, a similar law was passed and continues on the books under the heavy hand of Chief Minister M.G. Ramachandran, with little visible opposition.⁶⁶ The question of whether the law will remain now that MGR has departed from the scene, or other Chief Ministers will attempt to follow in his footsteps, is an indication how idiosyncratic and diverse state politics (and repression) can be.

In recent months there have also been renewed attacks on the independence of the Press by the central Government. The most spectacular example has been the raid by Directorate of Revenue Intelligence, customs and revenue service personnel on the Indian Express offices in New Delhi and at 12 printing centers

⁶⁵Ibid, p. 29-36.

⁶⁶Shastri, Ramachandran, "Gag Law: 2 Yardsticks?", Mainstream, 21(38) May 21, 1983, p. 11.

around the country. The ostensible reason for the attack on the largest Indian newspaper chain is the Government contention that the Express evaded customs duties and violated foreign exchange regulations in the course of purchasing printing machinery.⁶⁷ In fact, the paper had recently published a number of highly detailed and critical stories of the Government's handling of various scandals, including the Fairfax and Bofors deals. In the spirit of a true believer in his right to expression, editor Arun Shourie of the Express put it this way:

"My job is to acquaint the people with the character of their government. And the job of a good newspaper is to ensure accountability and to force a regime to unmask itself. One single essay or an entertaining piece doesn't change things. You can't afford to let go. . .

"A ruler never moves against everybody. During the Emergency Mrs. Gandhi attacked only the Indian Express. During and after Operation Bluestar twenty government cases were filed against the Express and not the Tribune. Because the Express was running blank spaces for editorials. There was no need to go after a paper complying with the official will."⁶⁸

In fact the Government is now moving forcefully indeed against the Express. Until recently the paper had been shut down by a "strike" and picket-line of non-Express employees. Not since 1975 has this kind of blatant repressiveness been seen from the Central Government.⁶⁹ (Of course, this being India, the situation is somewhat ironic: Does Government scrutiny into possibly legitimate

⁶⁷Badhwar, Inderjit, Prabhu Chawla and David Devadas, "On The Firing Line", India Today, p. 12.

⁶⁸Ibid, p. 16-17.

⁶⁹Weisman, Stephen, "Newspaper is Snared; Did Gandhi Spin the Web?", The New York Times, December 4, 1987, col. 1, p. 4.

questions of foreign exchange regulations constitute harrassment, on the theory that most of the time these violations are ignored?)

These latest developments prove that while the Press is alive and well in India today, the history of India has added a tension between the Press and Government about proper roles of serving society. Defending freedom of expression is still a proposition of living dangerously.

ANALYSIS

The first thing to recognize about a free press is that no matter where it is in the world, the word "free" must have a relativity about it. The Official Secrets Act of the U.K., which severely restricts publication of government secrets for up to 50 years, would effectively have prevented any of the more sensational/probing books that have come out of the post-Watergate era of media ascendancy in the United States. Nixon and Kissinger's biographies, not to mention Bob Woodward's recent Veil, would never have seen the light of day. A current case in point is Spycatcher, a book by one of Britain's former top agents. Currently on sale in the U.S., it is still banned in Britain and the subject of a suit before the High Court in London.⁷⁰

Within this context, it is useful to examine what mechanisms constitute the protection of whatever press freedom has been defined to mean in India, especially in relation to two other important democracies, the U.S. and the U.K.

As mentioned earlier, due to the long history of British judicial tradition in India, most laws regulating the Press are actually embodied in other legisla-

⁷⁰"London Editor Attacks Ban on 'Spycatcher' as Absurd", The New York Times, col. 1, December 2, 1987, p. 25.

tion, such as the Indian Penal Code and the Essential Commodities Act of 1955. This is well within the press laws tradition of the U.K. and other members of the Commonwealth.⁷¹ This situation does pose a possible dilemma, mentioned earlier in the context of the Regulatory Acts of 1867 and 1890. Implicit in both the Indian and British approach to press freedom is the notion that information and regulations on the establishment of printing presses will not be used as a form of censorship. Implicit also in this seemingly innocuous legislation, however, is precisely the kind of action being taken against the Indian Express. Such is the distrust in the U.S. of the State's ability to resist using such information for coercive purposes that there is no analogous set of regulatory laws in this country.

There are, however, certain laws in the U.S. regulating the Press with regard to national security.⁷² This is one of the few areas, aside from libel law (which is also quite similar in India and Britain, with perhaps more burden of proof on the periodicals in India) in which the U.S. actually regulates the Press outside the context of other, nonspecialized laws. And as in other democracies, the essential test of the Indian Government's ability to censor lies with the Supreme Court. Assuming the democracy is functioning properly, i.e., according to its constitutional tenants, all the legislative safeguards are in place in India to guarantee freedom from undue government harrassment. However, the existence of Article 19(2), despite the judicial safeguards, is an unfortunate loophole in the Constitution where the press is concerned. And as cited

⁷¹Basu, Law of Press in India, p. 33.

⁷²Holmes, Deborah, Governing the Press, Media Freedom in the U.S. and Great Britain, Boulder, CO., Westview Press, 1986, p. 5.

earlier in the cases of Bihar and Tamil Nadu, it is a loophole the state governments in particular have attempted to take advantage of.

There are two major areas, however, in which press freedom is under more direct infringement by the Government. The one mentioned earlier is the control of newsprint, and the other is withdrawal of Government advertising. The former law takes into account a fact of life based on India's current economic status. In 1982-83, for example, all the paper mills in India were functioning at 54% capacity, producing 1.19 lakh⁷³ tons against a capacity of 3.22 lakh tons; new mills were not being built; and paper consumption outstripped domestic supply by 2.21 lakh tons. Some commentators suggest self-sufficiency in newsprint production is an ambiguous proposition: the raw resource base of India is hardly conducive to vastly increased paper manufacturing.⁷⁴ Of the two restrictions mentioned, the newsprint situation is, despite the views above, perhaps the most susceptible to change. The concept of government advertising is an example of a philosophical point regarding the role of the State that is explored below, and has given great impetus to discussions of press freedom around the world, in particular in the debate over the New International Information Order.

As a constitutional statement, there is probably no greater, nor simpler weight given to press freedom than the placement and words of the First Amendment to the U.S. Constitution. These sentiments are repeated and then further elucidated in Article 125 of the U.S.S.R. Constitution:

⁷³A "lakh" is an Indian term used to denote quantities of 100,000.

⁷⁴"End to Newsprint Shortage?", editorial, Southern Economist, 23(4) June 15, 1984, p. 4.

"These civil rights are ensured by placing at the disposal of the working people and their organizations -- printing presses, stocks of paper, public buildings, the street communications facilities, and the material requisite for the exercise of human rights."⁷⁵

The significant difference in these two definitions of press freedom is the role and responsibility of the State. In a sense, with the legacy of over 150 years of British institutional law as an anchor and backdrop, India's Government and Press find themselves caught in the dilemma forged by two different strains of the Enlightenment and represented by the words in the U.S. and U.S.S.R. Constitutions: the divergent directions of classic liberalism and socialism.

In the U.S., one might say the liberal point of view has won out -- due chiefly to geographical considerations, there was a greater commitment to responsibility of man's freedom of action, including his ability to make mistakes, than in harnessing society's resources for some common goal. And in a quote that certainly describes processes in India as well as the U.S., American academic George Reedy put it this way:

"There are unquestionably many elements in American society that would prefer a 'responsible' press or a 'constructive' press -- meaning newspapers, magazines and telecasts that would seek to promote 'socially useful' goals. It is even possible that a majority of the people feel that way. What saves the free press under such circumstances is the inability of a majority to agree consistently on the goals that should be pursued."⁷⁶

The leading role of the Congress Party has no analogue in America or the U.K. This strength of Congress naturally works against the situation Reedy described above.

⁷⁵Radhakrishnamurti, Indian Press Laws, p. 24.

⁷⁶Reedy, George, "Philosophical Basis of America's Free Press", Monthly Commentary on Indian Economic Conditions, 26(1) August 1984, p. 58. (57-60)

But as mentioned in the introduction to this paper, political history and geography mean as much to freedom of the press as ideology. While the U.S. fought a war with foreign help against a similarly homogenous enemy relying on 18th century technology, the movement for Indian independence from the same colonial power took place over a century later under completely different cultural, economic and technological conditions. From the beginning in the U.S. the nature of the press was based on different self-supporting, geographically isolated economic and religious structures. By contrast, the growth of the press in India, as we have seen, was in many instances in direct response to the presence of the British and increased literacy and industrial development in India. It eventually became the spearhead of the movement for Independence.⁷⁷ This situation produced two fundamental characteristics of the Press in India in the twentieth century, namely the role of the Press as a formal opposition, and the role of the Press as a leader of Government policy in uniting the country to work for democratic and social progress. These two roles are bred of history and are to some extent mutually exclusive. They serve as the focal point of tension between the Indian Press and Government today.

It was perhaps natural for Congress leaders like Patel to assume that since the Press had been in the forefront of the freedom struggle that they would be in the forefront of the struggle for material, economic and political progress. This was unrealistic. For a Press that had been forged on a century of opposition, an opposition that helped ensure the independence and integrity of not just the Press but the budding Nation, the about-face predictably demanded by the Congress was impossible to accommodate. The Press in India is multi-

⁷⁷Mani, A.D., "Introduction", Journalism in Modern India, p. xii.

lingual, of vastly varying economic and geographic structure and concerns. Yet it is not being an apologist for censorship, nor for rank State control of publishing, to give some consideration to the post-Independence Government's position: if the Press was fighting for freedom and nation-hood, now they have it. Should they not preserve it?

It is on this fulcrum that the single issue which continues to play a major role in both the political and press life of the nation balances: the tension between maintaining communal calm and the freedom to inform, incite, and excite on religious issues. This is again a situation unique to India, at least in relation to the U.K. and the U.S. As mentioned earlier, Indian newspaper editors were often prosecuted by the British for engaging in spirited (if not raging) debate on communal issues. As the colonial press laws grew more and more repressive, the language and focus on this issue took on greater and greater weight. In the wake of the violence accompanying Partition, responsibility for maintaining relative communal calm was seen to be an essential role of government. Again, under the meaning of Article 19(2) to the Constitution, in the interest of preserving public order, the press has acquiesced, for the most part, to the necessity of some regulation of more scurrilous and dangerous journalistic exercises, to preserve the peace. Beyond the issue of newsprint, it is the issue of covering communal strife which poses the biggest ethical questions not for the Government, but for India's newspaper editors today.

At this point it should be said that while I've been qualifying what is meant by a "free" press, there is also no such thing as "objective" news. In the context of Western news media, being "objective" ostensibly means getting all the important facts right and telling both or all sides of a story in one news item. In fact, the gathering of news by fallible human beings is entirely

different cultures with varying resources presents vast subjective differences in what even appears as "news" to be collected. The notion of "objectivity" is not a fiction, but true "objectivity", like "freedom", is an illusion. Communicating all the important facts and all sides of a story correctly can still be done and yet look quite differently story to story, paper to paper, country to country. Only in the U.S., in particular, can one still find the concept of "objectivity" in the press represented with much faith or force. In most countries, including those of Europe, people read a variety of periodicals from an unselfconscious variety of viewpoints. In fact, part of what dictates the peculiar nature of American newspaper "objectivity" (i.e. homogeneity) is the economic structure: national news agencies and 1 or 2 regional papers per major city. As of twenty years ago, approximately 80% of America's daily newspapers were published in towns of less than 50,000 people.⁷⁸ Today, more communities are faced with less competition, as often only one daily paper is represented in town. In other words, the U.S. has lots of papers across the nation, but few national ones.

In Britain, by contrast, there are eight national daily newspapers, some of them crass tabloids, such as Rupert Murdoch's The Sun, others respectable papers of note, like Murdoch's The Times of London, but of the eight, six are generally Conservative in outlook and politics. These either produce spells of rank opposition in sections of the British Press (as during Labor's tenure) or a servility that at times borders on slavishness, as when Conservatives have taken the helm.⁷⁹

⁷⁸Narayanan, K.P., "The Future of Indian Journalism", in Journalism in Modern India, p. 251.

⁷⁹Holmes, Governing the Press, p. 38.

India presents yet another picture -- at least 30% of the daily newspaper titles are in the hands of chains, leaving about two-thirds of the papers in the country as regional periodicals.⁸⁰ There are now well over 1200 dailies and 5,000 weeklies in India. At the same time, 93% of the total circulation of dailies is claimed by only 144 papers.⁸¹

What might be more accurate, then, is to call what appears in the Western news media a "collective journalism of relevant facts" rather than "objective news". To a Congress Party M.P. with a couple of struggling small papers in his district, staying afloat to do their customers a service by virtue of Government advertising revenues, "relevant facts" certainly include the capitalist structure of large chains in India (e.g. capitalist economic structure, 70-80% reliance on advertising) leading to competition and a tendency to focus on sensational, popular, entertainment "news". In the typical Western newspaper editor's view, these are simply not relevant facts that go into what his paper's news looks like. Herein lies an instance of a principal distinction between what can be considered "free press" in India vs. the West. The word "Free" has economic connotations for newspapers no less than individuals that can have as much impact as laws. It must be obvious that based on the vastly differing economics of each country, what constitutes "objective" reporting and "relevant" facts moderate and define what is seen as "news" in each of these countries.

In conclusion, the evolution of the free Press in India has been an exciting process in the twentieth century. After thriving under a series of harsh measures imposed by their British administrators, the Indian Press took on the

⁸⁰Natarajan, History of Press in India, p. 307.

⁸¹Rav, M. Chala Pathi, "State of the Press, 1952-1982", New Quest, 37, January-February 1983, p. 7-9.

challenging task of helping both to build a new post-colonial society and keep its own watchdog status alive. The laws the press now functions under have the capacity to engender repression, but judicial sanction, as in the U.K. and the U.S., help ensure the Indian Press' continuing ability to function critically. In facing newsprint shortages, government inconsistency with regard to advertising distribution, covering communal issues, and braving strong-arm tactics such as raids and physical intimidation, the Indian Press has shown it is still living dangerously and proving the maxim that liberty must constantly be fought for and won.

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